

MF 08-5

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC FARMS,  
Taxpayer**

**Docket No.: 07-ST-0000  
Account No.: 00-00000  
NTL No.: 00-000000 0  
Account No.: 00-00000  
NTL No.: 00000000000**

**Julie-April Montgomery  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Gary Stutland, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois

**Synopsis:**

On June 22, 2007, the Department of Revenue ("Department") issued two Notices of Tax Liability ("NTLs") to ABC Farms ("Taxpayer") for motor fuel use tax. The NTLs allege that on April 11, 2007 Taxpayer was operating commercial motor vehicles in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*) or without a valid single trip permit pursuant to section 13a.5 of the Act. Taxpayer timely protested the NTLs. A hearing was held, by telephone, at the Taxpayer's request, during which Taxpayer presented the testimony of John Doe. ABC, owner and Smith Jones, driver, but no documents on its behalf. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the

Department. In support thereof, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. On April 11, 2007, Taxpayer entered Illinois and was traveling on Illinois Highway I-80W when its driver, Smith Jones, was stopped at a weight station and given a written warning for driving a 3-axle commercial motor vehicle having a gross weight of 86,840 pounds upon an Illinois highway without a valid Illinois single trip permit and an expired 2005 International Fuel Tax Agreement (“IFTA”) license/decal. Dept. Gr. Ex. No. 1 (“Motor Fuel Use Tax Violation Report” and “Written Warning”); Tr. pp. 31-32.
2. Also on April 1, 2007, a 2-axle commercial motor vehicle owned by Taxpayer, having a registered weight of 30,000 pounds, driven by John Doe. ABC, was also given a written warning for driving upon an Illinois highway without a valid 2007 IFTA license, 2007 IFTA decal or valid Illinois single trip permit. Dept. Gr. Ex. No. 2 (“Motor Fuel Use Tax Violation Report” and “Written Warning”); Tr. pp. 28-29.
3. As a result of these incidents on April 11, 2007, Taxpayer subsequently purchased two single trip permits from the State of Illinois for each of the two vehicles in question for the sum of \$20 per permit. Tr. p. 32.
4. On June 22, 2007, the Department assessed two penalties against Taxpayer. The first was in the amount of \$1,000 as a result of the incident with the vehicle driven by Mr. Smith Jones and the second was in the amount of \$2,000 as a result of the incident with the vehicle driven by Mr. Doe. The penalty notices, or NTLs, were

admitted into evidence under the certification of the Director of the Department.

Dept. Gr. Ex. Nos. 1-2 (Notices of Tax Liability Nos. 00-000000-0 and 00-000000-0); Tr. pp. 13, 15, 18, 20.

**Conclusions of Law:**

The NTLs issued by the Department allege that Taxpayer was found operating commercial motor vehicles in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Act, which provides in part as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. 35 ILCS 505/13a.4.

Section 13a.5 provides an exception for motor carriers holding a single trip permit. 35 ILCS 505/13a.5. A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. 35 ILCS 505/1.17. The Act defines "commercial motor vehicle" as follows:

[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds \*\*\*, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds \*\*\*, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. 35 ILCS 505/1.16.

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. 35 ILCS 505/13a.4. Section 13a.6 (b) of the Act states that if a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displayed decals or without a valid single trip permit, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty for the first offense and a

minimum penalty of \$2,000 must be paid for each subsequent offense. 35 ILCS 505/13a.6 (b).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the Taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978).

In the present case, the Department's *prima facie* case was established when the Department's certified copies of the NTLs were admitted into evidence. Once the NTLs were admitted into evidence, the Department's position is legally presumed to be correct.

In response Taxpayer presented no documentary evidence. It did offer the testimony of the drivers who admitted driving in Illinois without IFTA licenses/decals or single trip permits. Tr. pp. 29-32. Through its witnesses, Taxpayer admits that it was "in the wrong" (tr. p. 30) but seeks "consideration on the second offense" (tr. p. 30) based on its contention that it was unaware of these requirements for its travel in Illinois as well as its belief that it received misinformation when it was issued the written warnings. Tr. pp. 9, 39.

By its admission, there is no issue as to whether Taxpayer operated commercial motor vehicles in Illinois without the necessary licenses and decals. The Act does not contain an exception that allows a waiver of the penalty for any mitigating circumstances, be it lack of knowledge or possible misinformation. Although Taxpayer may have been unaware of the IFTA or single permit requirements and corrected its error as soon as possible, it still failed to have the licenses, decals or permits on the day in question.

**WHEREFORE**, for the reasons stated above, it is recommended that the Notices of Tax Liability be affirmed.

Julie-April Montgomery  
Administrative Law Judge

Enter: February 28, 2008